IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 17TH OCTOBER 2006 / 25TH ASWINA 1928

ST.Rev..No. 272 of 2006()

TA.205/2003 of S.T.A.TRIBUNAL,ADDL.BENCH,KZD.
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REVISION PETITIONER/APPELLANT

PAPPINISSERI VISHA CHIKILSA SOCIETY,
PAPPINISSERY, PIN-670 561.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENTS: RESPONDENT

STATE OF KERALA.

BY G.P. SRI.GEORGEKUTTY MATHEW

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ALONG WITH STRV NO.298/2006 ON 17/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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S.T.R.V. Nos.272 & 298 of 2006

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Dated this the 17th day of October, 2006.

JUDGMENT

Ramachandran Nair, J.

The question raised is whether the Tribunal is justified in confirming disallowance of sales tax exemption to the petitioner claimed under notification SRO 342/63. The sales tax assessments involved are for 91-92 and 92-93. In the original assessments exemption was granted under the notification on sales turn over. However, tax was levied under Section 5A on purchase turnover against which appeals were filed. The appellate authority set aside the assessments and remanded the cases for reassessment. In the course of reassessment, the Assessing Officer declined sales tax exemption on sales turnover on the ground that petitioner has not utilised the profits for the purpose of charity as contemplated under notification SRO 342/63. The first appellate authority allowed the appeals holding that the petitioner has not utilised the surplus for any other purpose other than for charity. However, on department appeals, the Tribunal restored the assessment holding that petitioner has not established actual expenditure of the income for charitable purposes. Revision petitions are filed against this order of the Tribunal.

2. We have heard counsel appearing for the petitioner and Government Pleader for the respondents. On the face of it, we do not find any ground to

interfere with the Tribunal's order because Tribunal found that petitioner has not utilised the surplus for the purpose of charity during the relevant year. Moreover, on facts it is seen that surplus is transferred to capital fund. Counsel for the petitioner submitted that capital fund is only a reserve for the purpose of future utilisation for the purpose of charity. The Supreme Court has in CARMEL BOOK STALL V. DEPUTY COMMISSIONER OF SALES TAX reported in 95 STC 306 held that the assessees should be granted benefit if surplus is utilised for the purpose of charity atleast by the time regular assessment was completed. In view of this decision, we feel petitioner should be given one more opportunity to demonstrate before the officer that funds are utilised for the purpose of charity before completion of assessment. The revision cases are therefore disposed of directing the officer to reconsider after verifying the accounts as to whether petitioner has utilised the surplus taken to capital fund for the purpose of charity before completion of assessment for these two years. If so, he shall allow the claim based on decision of the Supreme Court. On the other hand if he finds that the petitioner has not spent the amount for the purpose of charity before completion of regular assessment, then he shall decline exemption and Tribunal's order in that event will stand confirmed. We make it clear that the requirement of utilisation of fund before completion of assessment should be with reference to the

date of completion of original assessment and not the reassessment after remand in first round of appeal.

The revision cases are disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

K.M.JOSEPH
Judge

pms

C.N.RAMACHANDRAN NAIR &
K.M.JOSEH, JJ.

T.R.C. No. of 200

JUDGMENT

Dated